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NO.

Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1993

BP NORTH AMERICA PETROLEUM, INC.,
Petitioner,

versus

THE ROBERT E. LEE SS, her engines, tackle, apparel and furniture, *in rem*;

and

WATERMAN STEAMSHIP CORPORATION, INTERNATIONAL SHIPHOLDING CORPORATION, and MIDLAND ENTERPRISES, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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November, 1993

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QUESTIONS PRESENTED FOR REVIEW

I. Does a rule that requires actual ownership of damaged property as a prerequisite to recovery for related economic losses, which is in conflict with the opinions of four other federal circuits and which is far more restrictive than any standard previously announced, conflict with this Court's decision in *Robins Dry Dock & Repair Co. v. Flint*?

II. Does the Fifth Circuit's holding that it had original jurisdiction over a state law claim in which the parties were non-diverse, and over which supplemental jurisdiction was never invoked, violate the power of the federal courts and the intent of Congress expressed in 28 U.S.C. § 1367?

III. Does a rule that the Admiralty Extension Act preempts state law for shoreside injuries conflict with the intent of Congress and the decision of this Court in *Askew v. American Waterways Operators* affirming the concurrent power of states to regulate within their territorial jurisdiction?

LIST OF PARTIES

The parties to the proceeding in the Court of Appeals for the Fifth Circuit were:

BP North America Petroleum, Inc.,[1]

The S/S ROBERT E. LEE, her engines, tackle, apparel and furniture, *in rem*,[2]

Waterman Steamship Corporation,[3]

International Shipholding Corporation,[4] and

Midland Enterprises, Inc.[5]

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[1] BP North America Petroleum, Inc. is a subsidiary of BP America which is a subsidiary of British Petroleum.

[2] The S/S ROBERT E. LEE is wholly owned by respondent Waterman Steamship Corporation.

[3] Waterman Steamship Corporation is a subsidiary of Waterman Marine Corp. which is wholly owned by International Shipholding Corporation.

[4] International Shipholding Corporation's subsidiaries are: Central Gulf Lines, Inc.; St. Rose Fleeting Company Inc.; Johnsen NW & Company; LCI Shipholdings, Inc.; Adrian Shipping (Bermuda) Ltd.; Bay Insurance Company; Netherlands Maritime Agencies; Material Transfer, Inc.; Forest Lines, Inc; Cypress Auto Carriers, Inc.; Lash Marine Services, Inc.; Allied Ocean Carriers, Inc.; Sulphur Carriers, Inc.; and Waterman Marine Corp.

[5] Our research revealed no parent or subsidiary corporations for Midland Enterprises, Inc.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BP North America Petroleum, Inc., petitioner, hereby petitions this Court to issue a writ of certiorari to review the judgments and opinions of the United States Court of Appeals for the Fifth Circuit entered on June 25, 1993 and August 16, 1993.

OPINIONS BELOW

The opinions below are contained in the appendices to the Petition. Appendix "A" is the decision of the Court of Appeals for the Fifth Circuit rendered on June 25, 1993. Appendix "B" is the denial by the Court of Appeals for the Fifth Circuit of petitioner's Petition for Rehearing which was entered on August 16, 1993. Appendix "C" is the judgment of the Court of Appeals denying petitioner's Motion for Partial Dismissal Without Prejudice also entered on August 16, 1993. Appendix "D" is the Opinion of the District Court dated September 28, 1992. Appendix "E" is the judgment entered by the United States District Court for the Eastern District of Louisiana dated October 7, 1992.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on June 25, 1993, and rehearing was denied on August 16, 1993. This Court has jurisdiction to review the decision of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The following statutes, set forth in Appendices "F" and "G", are involved in this case:

28 U.S.C. § 1367

46 U.S.C. § 740

STATEMENT OF THE CASE

Course of Proceedings Below:

BP North America Petroleum, Inc. ("BP NAP") sued for the loss of use of its leased storage tanks, dedicated pipeline and preferred berth as well as for accompanying economic damages which resulted when the S/S ROBERT E. LEE allided with and damaged an oil storage facility where BP NAP was a lessee. At the trial court level, defendants Waterman Steamship Corporation ("Waterman"), International Shipholding Corporation ("ISC"), the S/S ROBERT E. LEE, and third-party defendant Midland Enterprises, Inc. ("Midland") moved for summary judgment alleging that, because BP NAP was a lessee, rather than an actual owner of the damaged facility, BP NAP's cause of action was precluded under *Robins Drydock & Repair Co. v. Flint*, 275 U.S. 303, 47 S.Ct. 134, 72 L.Ed. 290 (1927). BP NAP opposed those motions and demonstrated its proprietary interest in the facility under *Robins Dry Dock* and *Louisiana Ex-Rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (5th Cir. 1985) (*en banc*), *cert. denied*, 477 U.S. 903, 106 S.Ct. 3271, 91 L.Ed.2d 562 (1986). Additionally, BP NAP asserted that it was standing in the place of the property owner to assert those losses which were shifted to BP NAP and, therefore, *Robins Dry Dock* was inapplicable on its facts.

BP NAP also argued that its free-standing state law claim, brought under the federal court's diversity jurisdiction, was not preempted by the general maritime law because it was the intent of Congress, under the Admiralty Extension Act, to allow concurrent state and federal

jurisdiction over shoreside damages. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325, 93 S.Ct. 1590, 36 L.Ed.2d 280 (1972), *reh. denied*, 412 U.S. 933, 93 S.Ct. 2746, 37 L.Ed.2d 162 (1973).

The trial Court misinterpreted *Robins Dry Dock* to say only an owner of damaged property could recover under maritime law for lost use and economic losses associated with that property damage. It redefined "proprietary interest" (its previous requirement for recovery set out in *TESTBANK*) as outright ownership.

Regarding BP NAP's state law claims, the district court held that the Admiralty Extension Act made this a purely maritime action and ruled that the maritime law completely preempted Article 2703 of the Louisiana Civil Code for BP NAP's shoreside injuries. The district court held that there was no concurrent state and federal maritime jurisdiction for shoreside injuries notwithstanding this court's holding to the contrary in *Askew*.

BP NAP appealed the lower court's decisions and the Fifth Circuit affirmed. *IMTT Gretna v. ROBERT E. LEE SS, et al.*, 993 F.2d 1193 (5th Cir. 1993). The circuit court adopted the new definition of proprietary interest incorrectly stating that *Robins Dry Dock* "serves as notice to non-owners that they cannot claim damages in maritime collisions." 993 F.2d. at 1194. The circuit court also summarily held that maritime law preempts the separate state law claim for shoreside damages without considering *Askew*. BP NAP petitioned the circuit for a rehearing but that petition was denied.

A separate issue arose at the appellate level when BP NAP moved the circuit court for dismissal of its state law claims when it was discovered that diversity did not exist. BP NAP had initially brought its state law claim as a separate and independent action in federal court based upon its belief that diversity of citizenship existed between itself and the defendants.[6] ISC had failed to inform BP NAP, the lower court, or the circuit court of the lack of diversity jurisdiction over the state law claim. Subject matter jurisdiction based on diversity of citizenship may be challenged at any time in the proceedings and whenever it is discovered that the parties are not diverse, the claim should be dismissed. Fed. Rule Civ. P. 12(h)(3).

When addressing whether it possessed subject matter jurisdiction over BP NAP's state law cause of action, the circuit court ignored the fact that BP NAP had brought two separate and independent causes of action in federal court, one asserting state law claims in diversity and the other asserting claims under the Admiralty Extension Act. In BP NAP's federal action, no state law issues were raised, pleaded nor contested. In BP NAP's independent, free-standing state law action, no issues of maritime law were raised, pleaded, nor contested. BP NAP brought no state law claims pendent or supplemental to its federal maritime cause of action and never invoked the district court's supplemental jurisdiction.

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[6] After the appeal it was found that both BP NAP and defendant International Shipholding Corporation (hereinafter "ISC") are corporations organized under the laws of the State of Delaware, when the information was filed with the office of the Louisiana Secretary of State by ISC in 1993. Although ISC later contended it was confused as to which ISC corporation had been sued, BP NAP's complaint clearly identified ISC with the incident involving the ROBERT E. LEE. Only the ISC Delaware Corporation had any connection with the ROBERT E. LEE.

The Fifth Circuit simply stated in a conclusory manner that it had maritime jurisdiction over the entire case because it arose out of a single incident on navigable waters. *IMTT Gretna v. ROBERT E. LEE SS,* 993 F.2d at 1195. Neither the circuit court nor the district court ever reached the merits of BP NAP's state law claims for interference with a lessee's rights.

In response to these decisions, BP NAP files this Petition for a Writ of Certiorari to review the circuit court's opinions.

REASONS FOR GRANTING THE WRIT

First, the Court should issue a writ of certiorari to reverse the Fifth Circuit's decision which redefines the term "proprietary interest" to require actual ownership of damaged property as a prerequisite for recovery under *TESTBANK,* a holding which conflicts with four other federal circuits and this Court's decision in *Robins Dry Dock*, and which acts to forfeit valid proprietary rights.

Second, the Fifth Circuit refused to acknowledge that the only possible source of subject matter jurisdiction over the state law claim arises under 28 U.S.C. § 1367. This statute may provide supplemental jurisdiction over state law claims only when invoked by a plaintiff in federal court along with a related federal claim. Because plaintiff did not invoke supplemental jurisdiction, the court should not have assumed it. Even if it would be proper to assume supplemental jurisdiction *sua sponte,* the Fifth Circuit

stated essentially that it did not need to consider supplemental jurisdiction and incorrectly refused to undertake the analysis required by 28 U.S.C. § 1367(c). Recognition of the statute as the source of subject matter jurisdiction and proper analysis would have led inescapably to the conclusion that the state cause of action should be dismissed upon dismissal of the federal cause of action.

Even if the Fifth Circuit could be said to have properly retained jurisdiction over the state law claim, a separate and independent reason for reviewing the court of appeal's decision is the court's incorrect and expansive finding that BP NAP's state law claim was preempted by general maritime law, which is directly contrary to the intent of Congress as recognized in this Court's decision in *Askew*. According to the circuit court's decision, state law is preempted even in a maritime action brought under the Admiralty Extension Act, notwithstanding this Court's explicit pronouncement in *Askew* that a state retains concurrent jurisdiction over shoreside injuries caused by vessels in navigable waters.

I. The Circuit Court's Decision Requiring Actual Ownership of Damaged Property As A Prerequisite to Recovery For Economic Losses Is Contrary to *Robins Dry Dock* And Its Progeny.

A. The Fifth Circuit Incorrectly Interpreted *Robins Dry Dock*.

The circuit court has seriously misread *Robins Dry Dock* to require actual ownership of damaged property as a prerequisite to recovery for consequent economic losses. That holding undermines the rationale in both *Robins Dry*

Dock and *TESTBANK* which sought only to limit unforeseeable and unlimited classes of plaintiffs asserting likewise unlimited damages.

Whereas the holding in *TESTBANK* established a harsh but predictable rule requiring a proprietary interest in property for recovery of economic damages, the circuit court's new edict brutally forfeits proprietary leasehold rights. The holding below essentially extinguished all economic loss and loss of use rights because those rights had been contractually shifted from the owner to BP NAP.

The Court in *Robins Dry Dock* held that a contract alone cannot create a right in a third party to recover for another's negligence; the circuit court's opinion turns that decision on its head by holding that a contract which shifts the risk of loss extinguishes a primary property right by forfeiting any claims for lost use or economic losses.

B. This Fifth Circuit Decision Creates A Serious Conflict Between Circuits And With Maritime Tort Statutes.

This completely new and severely restrictive standard changes the face of admiralty law in the Fifth Circuit and sharpens the conflict between the Fifth Circuit's position and those held by the Second, Fourth, Sixth and Ninth Federal Circuit Courts.

In *Petitions of the Kinsman Transit Company,* 388 F.2d 821 (2d Cir. 1968), the Second Circuit rejected the theory later expressed in *TESTBANK* which prohibits recovery of economic losses absent a proprietary interest in

damaged property. Instead, the *Kinsman* court looked to traditional tort criteria of foreseeability, proximate cause, remoteness, duty, etc., to determine whether a vessel owner was liable for economic losses arising from a blocked river.

The Fourth Circuit Court of Appeals, in *Venore Transportation Company v. M/V STRUMA*, 583 F.2d 708 (4th Cir. 1978), allowed economic loss recovery for a time charterer. The plaintiff time charterer in *Robins Dry Dock* was not required to pay charter hire and, therefore, this Court held that the negligent party had no liability to the time charterer who merely suffered a contractually based loss. In contrast, in *Venore* and in the present case, the charterer/lessee was required to make payments under the terms of the charter/lease agreement while the damaged property was being repaired.

The Sixth Circuit also looks to principles of foreseeability and proximate cause when determining whether a party should recover for economic losses. In *In Re: Bethlehem Steel Corporation*, 631 F.2d 441 (6th Cir. 1980), *cert. denied*, 450 U.S. 921 (1981), the Sixth Circuit concluded that "there is no absolute rule either in Canada or the United States which forbids recovery for economic loss where the claimant has suffered no physical injury." 631 F.2d at 448. Rather than applying the proprietary interest rule espoused by the Fifth Circuit, the Sixth Circuit expressly adopted the *Kinsman* approach and limited recovery for pure economic loss to that which is direct and not too attenuated a consequence of the defendant's negligence.

Finally, the Ninth Circuit Court of Appeals in

Benefiel v. Exxon Corporation, 959 F.2d 805 (9th Cir. 1992), also looked to issues of foreseeability and proximate cause to dismiss the plaintiffs' claims. That court invoked the *Kinsman* analysis in determining whether the plaintiffs could recover for purely economic losses.[7] The federal district court in that case dismissed the plaintiffs' claims based on *Robins Dry Dock* and the Ninth Circuit affirmed, not on the ground of lack of proprietary interest, but rather on grounds of foreseeability and proximate cause.

The *TESTBANK* court stated that: "Indeed the federal interest in protecting maritime commerce is often best served by the establishment of uniform rules of conduct." 752 F.2d at 1032. There is no longer any uniformity in this area of general maritime law. Not only does the Fifth Circuit's incorrect reading of *Robins Dry Dock* — which also restricts *TESTBANK* far past the bright-line rule of proprietary interest established by that *en banc* decision — conflict with the above circuit courts, it also conflicts with specific provisions in the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2761, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, and the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c)(4). All of these statutory provisions allow maritime tort victims to recover for loss of profits or impairment of earning capacity due to the injury, destruction or loss or real property, personal property, or natural resources even if these par-

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[7] It should be noted that the *Benefiel* claim also dealt with the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1653(c)(1).

ties did not own the damaged property or resources.[8]

Additionally, most courts that apply the proprietary interest rule recognize exceptions where the rule creates a harsh result. These exceptions began with *Union Oil Co. v. Oppen*, 501 F.2d 558 (9th Cir. 1974), where the Ninth Circuit held that fishermen and seamen could recover lost profits arising from the reduction in commercial fishing potential of an area damaged by oil pollution. *Id.* at 560. In granting this recovery to commercial fishermen, the *Oppen* court looked to duty, proximate cause and foreseeability. The Fifth Circuit adopted that exception when it formulated the rule in *TESTBANK*.

C. Redefining "Proprietary Interest" To Require Actual Ownership Of Property Widens The Gulf Between The Fifth and Other Circuits.

Prior to the decision in the case at bar, the Fifth Circuit repeatedly looked to a party's possession and control of property, as opposed to its ownership, to determine whether a party could recover. In *Louisville & N.R. Co. v. M/V BAYOU LACOMBE*, 597 F.2d 469 (5th Cir. 1979), in *Texas Eastern Trans. v. McMoRan Offshore Explor.*, 877 F.2d 1214 (5th Cir. 1989), *cert. denied*, 493 U.S. 937, 110 S.Ct. 332, 107 L.Ed.2d 321 (1989), and in *Amoco Transport Co. v. S/S MASON LYKES*, 768 F.2d 659 (5th Cir. 1985), the Fifth Circuit always examined the nature of a non-owner's interest in damaged property to determine

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[8] *See* Sturla Olsen, Comment, *Recovery for the Lost Use of Water Resources:* M/V TESTBANK *On The Rocks?*, 67 Tul.L.Rev. 271, 284-303, (1992).

whether those non-owners could recover for lost use and economic losses. The Fifth Circuit sought to allow recovery for claimants closely related to the property owner or situated in a position similar to that of the property owner, while cutting off an unforeseeable and unlimited number of potential plaintiffs.

Now the Fifth Circuit simply asks who was the actual owner of the damaged property. This is in contravention of the spirit and policy of both *Robins Dry Dock* and *TESTBANK*; even the majority of the Fifth Circuit judges sitting *en banc* in *TESTBANK* were uncomfortable with the restrictiveness of the "proprietary interest" rule espoused in that case. As Judge Rubin's dissent noted, "in fact a majority of the court is unwilling to impose an unqualified requirement of physical injury to a proprietary interest." *TESTBANK*, 752 F.2d at 1053.

While uncomfortable with the "proprietary interest" standard, the majority of the *TESTBANK* court felt that it was an artificial but pragmatic method of limiting recovery for large and reverberating injuries, the sheer volume of which would strain the courts' limits of adjudication. *See* 752 F.2d at 1029, n.12; 752 F.2d 1032 (Gee, J., and Clark, C.J., *concurring*).

No other circuit court has held that ownership is an absolute prerequisite to recovery under *Robins Dry Dock*. The district court in this case began the detour from established jurisprudence when it improperly relied on the dicta in *Naviera Maersk Espana, J.A. v. Cho-Me Towing, Inc.*, 782 F. Supp. 317, 320 (E.D. La. 1992) to hold: " 'Proprietary Interest' typically equates to ownership." The

district court in *Naviera* was beginning to step off track when it misinterpreted Fifth Circuit precedent in *Vicksburg Towing Co. v. Mississippi Marine Transport Co.*, 609 F.2d 176 (5th Cir. 1980). That case held that if one is in fact an owner, then the proprietary interest analysis is moot and the injured party may recover. Conversely, if the injured party is not an owner, then the *Robins Dry Dock/TESTBANK* analysis becomes activated and courts then examine how similar the injured party's interests are to those of the actual property owner. *See Id.*

The circuit court's holding plainly turned on the fact that BP NAP did not own the damaged facility. In its first opinion the circuit court held that: "This bright-line rule serves as notice to non-owners that they cannot claim damages in maritime collisions." *IMTT Gretna v. ROBERT E. LEE*, 993 F.2d at 1194. Then, in its denial of BP NAP's petition for rehearing, the court reaffirmed that only owners of damaged property, and not lessees, could recover for associated economic losses and lost use.

II. The Circuit Court Incorrectly Assumed That Federal Courts Have the Power, Absent Diversity Jurisdiction And Without Invocation Of Supplemental Jurisdiction, To Adjudicate State Law Claims.

A. BP NAP Did Not Bring A Claim Under The Supplemental Jurisdiction Statute.

It was solely BP NAP's prerogative to ask the district court to exercise supplemental jurisdiction over its

related state law claims. The supplemental jurisdiction statute[9] codifies the case law doctrines of pendent and ancillary jurisdiction.[10] Both pendent and ancillary jurisdiction are bases on which *a party asserting a claim* could ask the court to also adjudicate a related cause of action over which the court had no independent basis of jurisdiction. *See Id.* Therefore, the party against whom the cause of action is being asserted cannot force or compel the asserting party to bring its state claim in federal court.

Cases prior to the enactment of § 1367 interpreting pendent jurisdiction note that it allows the original plaintiff to assert a related state law claim against the original defendant. *Federman v. Empire Fire & Marine Insurance*

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[9] § 1367. Supplemental Jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

....

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if -

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) The district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

....

[10] David D. Siegel, *Practice Commentary*, appended to 28 U.S.C.A. § 1367.

Co., 597 F.2d 798 (2d Cir. 1979). A pendent claim is a cause of action without an independent basis, brought by a party who is also asserting a substantial federal claim. *Harris v. Steinem*, 571 F.2d 119, 122 n.7 (2d Cir. 1978). The Fifth Circuit held that pendent jurisdiction "is predicated on the assumption that the *plaintiff* invokes the court's jurisdiction." *Ruiz v. Estelle*, 679 F.2d 1115, 1157, *vacated in part* 688 F.2d 266 (5th Cir. 1982) (emphasis added). "The plaintiffs are the masters of their own pleadings, it is their pleadings... which determine the nature of their complaint." *Carolina Aircraft Corporation v. American Mutual Liberty Ins. Co.*, 517 F.2d 1076 (5th Cir. 1975).

BP NAP never invoked the federal court's supplemental jurisdiction. Its state law claim was specifically identified as based upon diversity. Therefore, the circuit court should have recognized that it was without subject matter jurisdiction and dismissed the state law claim, without prejudice, upon receiving notice that defendant ISC had failed to disclose facts which defeated diversity jurisdiction.

B. The Fifth Circuit Declined to Exercise Supplemental Jurisdiction.

Even if the circuit court had the power, *sua sponte*, to assume supplemental jurisdiction, it did not do so, but erroneously concluded that its maritime jurisdiction provided grounds for ruling on the separate state law claims. "In 1807, Chief Justice Marshall wrote for the Court that 'Courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction.' " *Finley v. United States*, 490 U.S. 545,

547, 109 S.Ct. 2003, 2006, 104 L.Ed.2d 593 (1989) (quoting *ex-parte Bollman*, 4 Cranch 75, 93, 2 L.Ed. 544 (1807)). Merely because BP NAP's state law claim was factually related to the maritime claim, the federal court held that it automatically had subject matter jurisdiction over the state law claim.

If a federal court has subject matter jurisdiction over some of the claims asserted, it may have supplemental jurisdiction over certain related state law claims, even though it would not otherwise have jurisdiction to determine the state claims. However, the factors of convenience and judicial economy which gave rise to the doctrine of pendent jurisdiction do not completely override the federal court's limits of jurisdiction. 28 U.S.C. § 1367(c) sets out guidelines for the determination of whether the federal court should exercise its discretion to decline to hear supplemental claims. While a federal court has discretion to determine state law issues brought under supplemental jurisdiction, it does not have discretion to completly ignore the statute.

Otherwise, there would be no need for supplemental jurisdiction. All claims that have any factual relationship to a federal claim would automatically become federal claims notwithstanding their state law basis. There must be both proper invocation of § 1367 and some method to review that invocation to determine whether a party's potentially pendent state law claims are properly in federal court. The Fifth Circuit ignored both the proper statutory procedure and its own constitutional limitations by simply asserting that it had power to review BP NAP's state law claims.

C. If The Circuit Court Had Based Subject Matter Jurisdiction Over the State Law Claim On Supplemental Jurisdiction, It Should Have Dismissed The State Law Claim Without Prejudice Or Remanded The Case For Determination Of Supplemental Jurisdiction Factors.

The district court, as warranted by the pleadings at that time, believed that it had valid diversity jurisdiction over the plaintiff's state law claim. As such, the district court never considered whether it should have exercised supplemental jurisdiction in this case. Therefore, the circuit court had no basis or record on which to review this issue and should have dismissed the state law claim without prejudice.

Alternatively, if supplemental jurisdiction may have been proper in this case, which BP NAP denies, then the district court should be given the opportunity to decide whether such jurisdiction would have been proper. In *Growth Horizons, Inc. v. Delaware County, PA*, 983 F.2d 1277, 1284 (3d Cir. 1993), the Third Circuit remanded a similar case so that the district court could decide on its own whether to adjudicate the claim or dismiss it without prejudice. The Fifth Circuit should have remanded this case to the district court if it thought there was a ground for invoking supplemental jurisdiction, rather than arbitrarily casting aside procedural requirements.

The cases speak "with a single voice on what a court is to do with pendent state law claims when the litigant's federal cause of action has been dismissed at a preliminary

stage." *Ingram Corp. v. J. Ray McDermott & Co., Inc.*, 698 F.2d 1295, 1318 (5th Cir. 1983) (citing eleven cases).[11]

In the case at hand, the district court dismissed BP NAP's federal claim on a motion for summary judgment. Therefore, due to the early stage of the litigation, the circuit court should have dismissed the state law claim without prejudice.

Other factors also favor declination of supplemental jurisdiction here. BP NAP is able to bring its claims in Louisiana state court and as such, there is no compelling reason for the federal court to adjudicate the claim. BP NAP's cause of action under Louisiana state law is based on the Louisiana Civil Code and the state courts of Louisiana are far better suited to adjudicate that claim. Important issues of state law should be left to the courts of that state. *Port Allen Marine Serv. v. Chotin*, 765 F. Supp. 887 (M.D. La. 1991).

It would be improper to attempt to "cure" the Court's lack of jurisdiction by declaring BP NAP's entire state law cause of action retroactively "supplemental" to

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[11] The practice notes appended to the supplemental jurisdiction statute state that "whether a dismissal of the touchstone claim should bring about a dismissal... of the dependent claim for want of supplemental jurisdiction should hinge on the moment within the litigation when the dismissal of the touchstone claim takes place, and on the other surrounding circumstances. If, for example, the main claim is dismissed early in the action, before any substantial preparation has gone into the dependent claims, dismissing or remanding the latter upon declining supplemental jurisdiction seems fair enough." David D. Siegel, *Practice Commentary*, appended to 28 U.S.C. § 1367. *See La Porte Const. Co., Inc. v. Bayshore Nat. Bank*, 805 F.2d 1254 (5th Cir. 1986).

BP NAP's separate and independent general maritime law cause of action. Even if supplemental jurisdiction could have been assumed by the circuit court, it was not, and the required statutory analysis was not performed. Therefore, the decision of the Fifth Circuit should be reversed and the state law claim should be dismissed without prejudice. Alternatively, the case should be remanded for determination of the factors to be considered in exercising supplemental jurisdiction.

III. The Circuit Court's Opinion Directly Conflicts With This Court's Holding In *Askew* That Congress Did Not Intend For The Admiralty Extension Act To Preempt State Law For Sea-To-Shore Injuries.

Even if the circuit court could be said to have properly exercised jurisdiction in this matter, BP NAP's state law claims — which were independent free-standing claims based on diversity jurisdiction — should have been allowed to proceed notwithstanding any alleged conflict with maritime law.

Absent the Admiralty Extension Act, there would be no maritime jurisdiction over this action. *Victory Carriers v. Law,* 404 U.S. 202, 206, 92 S.Ct. 418, 30 L.Ed.2d 383 (1971). "[A]ccidents on land were not within the maritime jurisdiction as historically construed by this Court. Piers and docks were consistently deemed extensions of land; injuries inflicted to or on them were held not compensable under the maritime law." *Id.*, 404 U.S. at 207.

The Fifth Circuit confused general maritime law

with the Admiralty Extension Act. It is true that general maritime law can preempt conflicting state law where there is general maritime jurisdiction pursuant to the United States Constitution. It is not true to say that a federal statute extending maritime jurisdiction to shoreside injuries preempts state law to the same extent. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325, 93 S.Ct. 1590, 36 L.Ed.2d 280 (1972), *reh. denied*, 412 U.S. 933, 93 S.Ct. 2746, 37 L.Ed.2d 162 (1973). In *Askew*, this Court addressed that precise issue and held that the Admiralty Extension Act does not preempt state law for shoreside injuries: "[W]e decline to move the [preemption] line of cases shoreward to oust state law from any situtations involving shoreside injuries by ships on navigable waters. *The Admiralty Extension Act does not preempt state law in those situations.*" 411 U.S. at 344 (citations omitted) (emphasis added).

This Court recognized that the Admiralty Extension Act was designed by Congress to give a maritime remedy to parties injured by ships. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 222, 90 S.Ct. 347, 24 L.Ed.2d 371 (1969). However, the Court specifically held that Congress had no intention under that protectionist statute to preempt or displace state law remedies or state law jurisdiction for shoreside injuries. *Askew*, 411 U.S. at 344.

Therefore, the circuit court's decision preempting the Louisiana Civil Code on the ground that it is displaced by admiralty law is in direct conflict with this Court's decisions in *Askew* and *Nacirema*. Moreover, the intrusive impact of this decision on a state's ability to regulate and protect its shoreside interests is unwarranted by the statute

and conflicts with *Finley* and with congressional and judicial trends to extend the power of states over areas traditionally under maritime law's jurisdiction such as oyster beds and other natural resources.[12]

CONCLUSION

This case involves a drastic restriction of prior case law at a time when admiralty has been moving uniformly toward modern tort principles of foreseeability and proximate cause.

First, the circuit court misread this Court's precedent in *Robins Dry Dock* as requiring actual ownership of property, thus extinguishing property rights when they are contractually shifted to a non-owner. Whereas the Fifth Circuit's holding in *TESTBANK* conflicts with the test for recovery in four other circuits, the present decision strips away any veneer of reasonableness by forfeiting valid proprietary rights.

Second, the circuit court improperly assumed that it had jurisdiction over a state law claim merely because it was factually related to a federal maritime claim. The circuit court's overreaching of its constitutional powers both vitiates the need for supplemental jurisdiction and federalizes all state law claims if they have any federal nexus whatsoever.

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[12] *See, e.g.*, the Oil Pollution Act, 33 U.S.C. § 2701, *et seq.* This statute specifically preserves state law causes of action in addition to setting out federal remedies.

Third, the circuit court wrongfully held that its unwarranted restriction of *Robins Dry Dock* also preempts a state law cause of action for shoreside damages. It ignored this Court's directive that there is no evidence of congressional intent under the Admiralty Extension Act to displace state law for shoreside injuries caused by a vessel in navigable waters.

Petitioner respectfully requests that this Court grant this petiton for a writ of certiorari to review the Fifth Circuit's incorrect interpretation of *Robins Dry Dock* which creates a serious conflict among the circuits, its determination of a state law claim without invoking supplemental jurisdiction, and its violation of states' rights by improperly expanding the admiralty preemption doctrine.

Respectfully submitted,

RICE, FOWLER, KINGSMILL,
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APPENDIX A

IMTT-GRETNA, Plaintiff,

v.

ROBERT E. LEE SS, etc., et al., Defendants.

BP NORTH AMERICA PETROLEUM, INC., Plaintiff-Appellant,

v.

The ROBERT E. LEE SS, her engines, tackle, apparel and furniture, in rem; Waterman Steamship Corporation, et al., Defendants-Appellees,

and

Midland Enterprises, Inc., in personam, Third Party Defendant-Appellee.

No. 92-3943

Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

June 25, 1993.

Lessee of dock brought action against vessel owner, seeking to recover economic damages after dock was damaged in collision. The United States District Court for the Eastern District of Louisisna, Adrian G. Duplantier, J.,

entered summary judgment in favor of owner, and lessee appealed. The Court of Appeals, Reynaldo G. Garza, Circuit Judge, held that: (1) lessee did not have sufficient proprietary interest in dock to recover economic damages from owner, and (2) admiralty law preempted lessee's state law causes of action against owner.

Affirmed.

Appeal from the United States District Court For the Eastern District of Louisiana.

Before REYNALDO G. GARZA, SMITH and WIENER, Circuit Judges.

REYNALDO G. GARZA, Circuit Judge:

BP North America Petroleum ("BP NAP"), the appellant, sued for economic damages because it was unable to use a leased berth due to a collision. The district court granted summary judgment in favor of appellees SS Robert E. Lee ("SS Lee"), Waterman Steamship Corporation ("Waterman"), International Shipholding Corporation ("ISC") and Midland Enterprises, Inc., ("Midland"). Upon review, we affirm the summary judgment.

FACTS

On January 24, 1991, the SS Lee left New Orleans and proceeded upriver so that it could turn around in a wider area. It collided with the International Matex Tank Terminal ("IMTT")—Gretna dock facility near the Mile 97

area of the Mississippi River as it was executing this U-turn on its way downriver. The dock did not become fully operational for four months. IMTT—Gretna sued the SS Lee and its owner and operator, Waterman and ISC. The defendants in turn filed a third party claim against Midland, the owner of the MV Gayle. The defendants claimed that the actions of the MV Gayle contributed to the collision. Midland cross-claimed against Waterman seeking indemnification and contribution.

That suit was combined with the instant claim of BP NAP, a lessee of part of the dock facilities. IMTT—GRETNA eventually settled with the original defendants. The defendants all submitted motions for summary judgment against the remaining claim of BP NAP. The district court granted summary judgment in favor of the defendants due to BP NAP's lack of a proprietary interest. The district court further ruled that maritime law preempted any remaining state claim. The claims against all defendants, including third-party defendant Midland, were dismissed on October 7, 1992. BP NAP filed a timely appeal on November 2, 1992.

ANALYSIS

I. *Propriety Interest Necessary*

The district court correctly granted summary judgment in favor of defendants because of the appellant's lack of a proprietary interest. The long established requirement of ownership in order to validly claim against a tortfeasor in admiralty was clearly enunciated by Justice Holmes in *Robins Drydock & Repair Co. v. Flint,* 275 U.S. 303

307-9, 48 S.Ct. 184, 134-5, 72 L.Ed. 290 (1927). A tortfeasor is liable only to the owner of the dock and he has no responsibility to a third party lessee. This policy was put in place to prevent numerous claims of economic damage from parties the tortfeasor did not know he owed any duty to. "[N]o authority need be cited to show that, as a general rule, at least, a tort to the person or property of one man does not make the tortfeasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong." *id.* at 309, 48 S.Ct. at 135. The SS Lee did not know of any contracts the owner, IMTT—Gretna, might have had. The dock owner was the only one who suffered any physical damage. The BP NAP claim is solely for economic damages due to its inability to use the berth it had leased from the owner.

The Fifth Circuit adhered to the Supreme Court ruling in its en banc opinion in *Louisiana ex rel, Guste v. M/V Testbank,* 752 F.2d 1019 (5th Cir. 1985), *cert. denied,* 477 U.S. 903, 106 S.Ct. 3271, 91 L.Ed.2d 562 (1986). "This circuit has consistently refused to allow recovery for economic loss absent physical damage to a proprietary interest." *Id.,* 752 F.2d at 1024. "In conclusion, having reexamined the history and central purpose of the doctrine of *Robins Dry Dock* as developed in this circuit, we remain committed to its teaching." *Id.,* 752 F.2d at 1032. This bright line rule serves as notice to non owners that they cannot claim damages in maritime collisions. "Denying recovery for pure economic losses is a pragmatic limitation on the doctrine of foreseeability, a limitation we find to be both workable and useful." *Id.*

The appellant, fully appreciating the roadblocks set

by *Robins* and *Testbank*, argues at length that it has a proprietary interest in the dock. BB NAF argues that only their products were allowed in the pipelines they leased and that they had preferential docking rights at the damaged berth. The Fifth Circuit states that the requirements for proprietary interest are actual possession or control, responsibility for repair and responsibility for maintenance. *Texas Eastern Trans. v. McMoran Offshore Explor.*, 877 F.2d 1214, 1225 (5th Cir.), *cert. denied*, 493 U.S. 937, 110 S.Ct. 332, 107 L.Ed.2d 321 (1989). BP NAP fails to meet any of the criteria. It certainly did not own any of the property and IMTT—Gretna maintained the right to refuse BP NAP access to the leased pipelines if it felt that the liquids being pumped could be harmful to others or to the pipeline. The appellant's use of the dock and pipelines was valid only for the term of the lease. BP NAP did not have control of the property. It did not repair or had the responsibility to repair the damage. It did not station any employees at the dock so it clearly did not maintain the facility. The district court correctly found that no issue of proprietary interest existed that could have prevented the granting of summary judgment against BP NAP.

II. *Maritime Law Preempts State Cause of Action*

The appellant argues that they can still sue for economic damages in state court separate from admiralty law. We disagree. Maritime law must maintain its uniformity and it preempts state law when it is contradictory to maritime law's purpose. *J. Ray McDermott & Co., Inc. v. Vessel Morning Star*, 457 F.2d 815, 818 (5th Cir.)(en banc), *cert. denied*, 409 U.S. 948, 93 S.Ct. 271, 34 L.Ed.2d 218 (1972). The court stated:

> Although state law may occasionally be utilized to fill the gaps in an incomplete and less than perfect maritime system it cannot be employed to contravene an Act of Congress, to prejudice the characteristic features of the maritime law or to disrupt the harmony it strives to bring to international and interstate relations.

Id., 457 F.2d at 818. Maritime law specifically denies recovery to non proprietors for economic damages. To allow state law to supply a remedy when one is denied in admiralty would serve only to circumvent the maritime law's jurisdiction. The Fifth Circuit stated in *Testbank:*

> Indeed the federal interest in protecting maritime commerce is often best served by the establishment of uniform rules of conduct. The *Robins* rule has proved to be a workable and useful tool in our maritime jurisprudence. To permit recovery here on state law grounds would undermine the principles we seek to preserve today.

Id., 752 F.2d at 1032. Therefore, state law does not supply an alternative remedy to BP NAP when its claim was already denied in its proper maritime jurisdiction.

CONCLUSION

We find that there exists no triable issues that would invalidate summary judgment for the appellees. For the above stated reasons, we

AFFIRM.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3943

IMTT—GRETNA,

Plaintiff,

versus

ROBERT E. LEE SS, ETC., ET AL.,

Defendants.

****

FILED
AUG 16, 1993

BP NORTH AMERICA PETROLEUM, INC.,

Plaintiff-Appellant,

versus

The ROBERT E. LEE SS, her engines, tackle, apparel and furniture, in rem; WATERMAN STEAMSHIP CORPORATION, ET AL.,

Defendants-Appellees,

and

MIDLAND ENTERPRISES, INC.,
in personam,

Third Party Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

ON PETITION FOR REHEARING

(August 16, 1993)

Before REYNALDO G. GARZA, SMITH and WIENER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/Reynaldo G. Garza
United States Circuit Judge

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-3943
Summary Calendar

(CA92-174-H/CA92-295-H)

BP NORTH AMERICA PETROLEUM, INC.,
Plaintiff-Appellant,

VERSUS

SS ROBERT E. LEE, ETC. ET AL.,
Defendants-Appellees.

FILED
AUG 16 1993

Appeal from the United States District Court
For the Eastern District of Louisiana

Partial Motion To Dismiss

(August 16, 1993)

Before REYNALDO G. GARZA, SMITH and WIENER, Circuit Judges.

PER CURIAM:

We previously ruled in the above case that the

district court's summary judgment in favor of the appellees was in all respects proper. *See IMTT-Gretna v. Robert E. Lee SS,* 993 F.2d 1193 (5th Cir. 1993). The appellant now contends that its state law claims somehow survived our prior ruling because we did not have jurisdiction to entertain them. Consequently, they seek a partial dismissal without prejudice as to the state law claims.

The appellant had brought suit alleging general maritime and state law tort claims. We held that the appellant's maritime claims were barred by the *Robins Dry Dock* doctrine, which precludes recovery for non-owners in maritime collisions. Further, we held that appellant's state law claims were preempted by general maritime law.

The appellant contends that the state law claim was an entirely separate suit from the general maritime claim and that the sole jurisdictional basis of the state law claim hinged upon diversity of the parties. The appellant now argues that the defendants are not entirely diverse and, thus, there was no independent ground of jurisdiction for the state law claim.

The appellant asserts that without an independent basis of jurisdiction, the court could only exercise supplemental jurisdiction over the state law claims. Further, the appellant argues that there was no proper exercise of supplemental jurisdiction in the present case.

Appellant's argument is unpersuasive. This case unmistakably arose out of one single incident - the collision of the SS Robert E. Lee with a barge moored on the Mississippi River. Because the accident occurred in navigable waters

of the United States, the court below properly had jurisdiction over the entire matter by virtue of the general maritime claims.

> If a claim based upon a maritime tort is asserted in a suit brought under the admiralty jurisdiction of the federal district courts, . . . the fact that diversity jurisdiction also can be alleged as a basis of subject matter jurisdiction is of no moment. Moreover, both the procedural aspects and the substantive features of a maritime tort action under federal admiralty jurisdiction will be governed by federal law.

Charles A. Wright et al., *Federal Practice and Procedure* § 3676 (Supp. 1993) (footnotes omitted); see also *Parker v. Gulf City Fisheries Inc.* 803 F.2d 828, 829 (5th Cir. 1993) (as with other questions of subject matter jurisdiction, if "the factual findings regarding subject matter jurisdiction are intertwined with the merits, "jurisdiction will be assumed unless the maritime basis for the claim is "immaterial or is wholly insubstantial and frivolous").

In the case at bar, we have determined that the state law claims are preempted. We clearly had federal subject matter jurisidiction over the entire incident as a consequence of general maritime law. The maritime claims are certainly not frivolous or insignificant - they form the crux of the controversy. The presence or absence of diversity jurisdiction in the present case is irrelevant to our court's subject matter jurisdiction. Therefore, the appellant's

attempt to obtain a second bite in a state forum will be

DENIED.[1]

[1] In a separate order today we also dismiss appellant's motion for rehearing.

APPENDIX D

MINUTE ENTRY
DUPLANTIER, J.
SEPTEMBER 28, 1992

FILED
SEP 28 1992

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISISNA

BP NORTH AMERICA PETROLEUM, INC. — CIVIL ACTION

VERSUS — NO. 92-0174
C/W 92-0295

THE S/S ROBERT E. LEE, her engins, tackle, apparel, and furniture, *in rem*
WATERMAN STEAMSHIP CORPORATION and INTERNATIONAL SHIPHOLDING CORPORATION, *in personam* — SECTION "H"

For the following reasons, the motion for summary judgment filed on behalf of defendants, Waterman Steamship Corporation and International Shipholding Corporation, and third-party defendant, Midland Enterprises, Inc., is GRANTED

The vessel, ROBERT E. LEE, owned and operated

DATE OF ENTRY SEP 28 1992

by Waterman and International, struck part of the dock area at a petroleum storage facility owned by International Matex Tank Terminal (IMTT).

IMTT brought suit against Waterman and International to recover for the damage to the docking facility. BP-NAP, a lessee of part of the docking facility, filed a separate suit against the same defendants to recover the value of loss of use of the facility and its lost profits pursuant to the general maritime law and state law. Waterman filed a third-party claim against Midland, the owner and operator of the M/V GAYLE B, for contribution and indemnity, claiming that the M/V GAYLE B embarrassed the navigation of the S/S ROBERT E. LEE and thus contributed to the allision. The suits filed by IMTT and BP-NAP were consolidated. IMTT settled its claim and assigned its interest to Waterman. Only BP-NAP's claim against Waterman and International and the third-party claim against Midland remain.

The parties do not dispute the court's admiralty jurisdiction nor that the parties are diverse in citizenship. The motion for summary judgment is based upon defendants' contention that BP-NAP cannot recover under general maritime law for its economic losses and that the general maritime law precludes plaintiff's state law claim.

Admiralty

The Supreme Court and the Fifth Circuit have fashioned a "bright line" rule as to who may recover for economic losses under general maritime law. *See Robins Dry Dock & Repair Co. v. Flint,* 275 U.S. 303, 48 S. Ct. 134

(1927); *Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (1985). To recover, the plaintiff must have a "proprietary interest" in the property. "Proprietary interest" typically equates to ownership. *See Naviera Maersk Espana, S.A. v. Cho-Me Towing, Inc.*, 782 F. Supp. 317, 320 (E.D. La. 1992).

The lease agreement between the parties determines plaintiff's rights in the facility and whether those rights are sufficient to give the plaintiff a proprietary interest in the facility. According to the terms of the lease agreement, IMTT provided to BP-NAP five storage tanks, one pipeline dedicated to transporting BP-NAP's products, and preferential barge access. IMTT retained exclusive control and administration of the tanks; reserved the right to refuse to accept or store material if it reasonably believed that the materials posed risks to other materials, storage facilities, or individuals; reserved the right to reject any vessel, barge, tanker, or rail tank car which it reasonably determined to be unsuitable for handling; and prohibited any sublease, transfer, or assignment of the lease by BP-NAP without IMTT's written consent.

The rights granted by the lease fall short of the possession and control necessary to constitute a "proprietary interest" in the facility. Plaintiff points to language by the Fifth Circuit which may suggest that a non-owner may recover economic losses in certain circumstances. *See, e.g., Texas Eastern Transmission Corp. v. McMoRan Offfshore Exploration*, 877 F.2d 1214, 1225 (5th Cir. 1989). However, I know of no case in which the Fifth Circuit has permitted a non-owner of property damaged by

a vessel to recover economic losses.[1] I conclude that *Robins Dry Dock* and its progeny in this circuit preclude plaintiff's recovery.

State Law

Plaintiff's claim is governed by maritime law, and maritime law precludes plaintiff's state law claim. Plaintiff argues that the Admiralty Extension Act, which applies here, does not displace state law remedies in a case in which the court also has jurisdiction based on diversity. The Fifth Circuit makes no distinction between "pure" admiralty jurisdiction and jurisdiction under the Admiralty Extension Act when applying admiralty law to the exclusion of state law. *Louisville & N.R. Co. v. M/V BAYOU LaCOMBE,* 597 F.2d 469 (5th Cir. 1979). "It matters not whether the collision be between vessels, or vessel and bridge, it is a maritime collision to which [maritime law] applies." *Empire Seafoods, Inc. v. Anderson,* 398 F.2d 204, 212 (5th Cir. 1968). The same principles of maritime law govern whether plaintiff's claim is brought in state court, on the law side of federal court, or under the court's admiralty jurisdiction. *Powell v. Offshore Navigation, Inc.,*

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[1] The Fifth Circuit has allowed recovery of pecuniary losses related to damage to non-owned property by an owner of property also damaged by a vessel collision. *Domar Ocean Transportation, Ltd. v. M/V ANDREW MARTIN,* 754 F.2d 616 (5th Cir. 1985). The owner of a damaged tug recovered for loss of use of the tug and a barge which it did not own; the barge was under tow by the tug at the time of the collision. *Id.* at 617. The court concluded that the owner of the tug 'had a proprietary interest" in the tug and the barge "as a unit." *Id.* at 619 The decision does not expand the category of plaintiffs entitled to recover under *Robins Dry Dock;* it merely permits a proprietary plaintiff to recover fully for the damages sustained. Plaintiff, in the instant case, has no proprietary interest in any of the damaged property.

644 F.2d 1063, 1065 n.5 (5th Cir. 1981).

Plaintiff correctly points out that state law may sometimes supplement federal maritime law. However, state law may not conflict with federal maritime law so as to redefine the requirements or limit the recovery available in admiralty. *Id.* (citing *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325, 93 S. Ct. 1590 (1973); additional citations omitted)). The need for uniformity underlying much of maritime law applies equally to the rule formed in *Robins Dry Dock. M/V TESTBANK*, 752 F.2d at 1032. Plaintiff may not recover under state law what is explicitly denied in admiralty. "To permit recovery here on state law grounds would undermine the principles we seek to preserve today." *Id.*

9/28/92

/s/ Illegible
Judge

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IMTT-GRETNA	CIVIL ACITON
VERSUS	NO. 91-174
SS ROBERT E. LEE, ETC., ET AL	SECTION "H"

CONSOLIDATED WITH:

BP NORTH AMERICA PETROLEUM, INC.	CIVIL ACTION
VERSUS	NO. 92-295
SS ROBERT E. LEE, ETC., ET AL	SECTION "H"

J U D G M E N T

Considering that counsel have advised the court that all claims of IMTT-Gretna have been settled; and considering the court's minute entry dated September 28, 1992, and further considering the court's directions as to entry of judgment;

IT IS ORDERED, ADJUDGED AND DECREED that Civil Action No. 92-174 be and it is hereby dismissed, each party to pay its own cost.

DATE OF ENTRY OCT 7-1992

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, The SS Robert E Lee, her engines, Tackle, apparel and furniture, in rem, Waterman Steamship Corporation, and International Shipholding Corporation, in personam, and against BP North America Petroleum, Inc., dismissing plaintiff's suit with cost.

New Orleans, Louisiana, the 6th day of October, 1992.

/s/ Illegible

UNITED STATES DISTRICT JUDGE